BAIL SLIP

The Accused / Appellant was directed to be released on bail by the order of this Court dated 4.12.2000 and made in Crl.MP.No.8916/00 in CA.No.1127/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09-07-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No. 1127 of 2000

Pattu @ Govindan ..Appellant

-vs-

State rep by
Inspector of Police
Krishnagiri Town Police Station.
(Crime NO.1102/1997) .. Respondent

This appeal is filed under Section 374 Cr.P.C.,against the Judgment passed in S.C.No.168/1999 dated 30.10.2000 on the file of the Principal Sessions Judge, Dharmapurai at Krishnagiri.

For appellant : : Mr. V.Raja Mohan
For respondent : : Mr.V.R.Balasubramaniam
Additional Public Prosecutor

JUDGMENT

This appeal has been preferred against the Judgment in S.C.168 of 1999 on the file of Principal Session Judge, Dharmapuri at Krishnagiri.

2. The brief facts of the case relevant for deciding this appeal are that on 5.8.1997 at about 6.30p.m., the accused with an intention to cause murder of the victim Ganesan had assaulted him with hands on the nap, stomach and chest repeatedly which resulted in the death of the victim on the next day ie., on 6.8.1997 at 6.00p.m.,

2. The learned Judicial Magistrate , on appearance of the accused on summons had furnished copies under Section 207 of Cr.P.C. and since the offence is triable by the Court of Sessions had committed the case to the Principal Sessions Judge under Section 209 of Cr.P.C. The learned

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Sessions Judge on appearance of the accused had framed charges under Section 302 of Cr.P.C. and when questioned, the accused pleaded not guilty.

3. Before the trial Court, P.Ws 1 to 9 were examined . Exs P1 to P 10 were exhibited and , M.Os 1 to 4 were marked.

4. P.W.1 is the wife of the deceased Ganesan. According to her, her husband Ganesan was working under one Perumal as a watch man in his Mango garden for a salary of Rs.1500/- per annum and subsequently, in the place of her husband, the accused was employed by Perumal and that some arrears in the pay was due to her husband. The accused had promised her husband to get the arrears from Perumal but he has not stick to his promise which resulted in a grudge between her husband and the accused and on the date of occurrence, the accused took her husband victim Ganesan under the pretext of getting the arrears of salary took along with him and that she ,P.W.2 and P.W.3 along with one Venkataraman followed them at a distance of 10 feet. While going, the accused abused her husband and suddenly they picked up quarrel inspite of she , Venkataraman,and Muniratnam intervened, the accused had assaulted her husband on the nap repeatedly with his hands and also kicked her husband on the chest and at that time, when she(P.W.1) intervened she was also assaulted by the accused on the head and she and her daughter raised hue and cry which attracted a few public. On seeing the public approaching, the accused ran away from the place of occurrence and that she gave some water to her husband to drink,but he could not. Immediately, she brought her husband to the house in a cycle with the help of Venkataraman and Muniratinam (P.W.3) and that since she has no sufficient money to take her husband to the hospital, immediately on the following day, her son Moni went to his grand mother's house(P.w.1's mother) and brought some amount with the help of that she hired an auto-rickshaw in order to take her husband to the Government Hospital, Krishnagiri but on the way her husband breathed his last. Immediately she rushed to the Village Administrative Officer, Krishnagiri preferred Ex P1 complaint. She has identified M.O.1 to M.O.3 are the wearing apparels of her husband. M.O.4 is the waist rope of her husband.

4a. P.W.2 is the daughter of P.W.1 who has also corroborated the evidence of P.W.1 to the effect that on the fateful day at about 6.00p.m., accused took her father in order to get his arrears of salary and that she along with her mother and P.W.3 followed them and when they were nearing mango garden of Perumal, the accused abused her father in filthy language and caught hold of his nap gave two or three blows and also the accused kicked her father on the
chest. P.W.3 and Venkataraman also intervened but they were also pushed by the accused on the side. When passers by like Kaliyappan, Jaya and Murugan came to the rescue of her father, the accused ranaway from the scene of occurrence and that her father became unconscious and he was brought to

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the house in a cycle with the help of P.W.3 and Venkataraman and since her mother was not having sufficient money to take her father immediately to the hospital on the next day, her brother brought some amount from her grand mother with the help of that , they removed the victim in an autorickshaw to the Government Hospital Krishnagiri and that her mother has preferred a complaint.

4b. P.W.3 has also corroborated the evidence of P.W.1 and P.W.2. He also speaks about the attack made by the accused on the victim on his nap and also on his chest with the hands and legs. He would admit that after the occurrence,he and Venkataraman took the victim Ganesan in a cycle belonged to one Chenrayan and that he heard on the next day that the victim is no more.

4c. P.W.4 is Chenrayan who had helped the victim to remove in his cycle from the place of occurrence to the victim's house.

4d.P.W.9 is the Investigating Officer who had took up investigation in this case which was registered under Krishnagiri Police Station Crime No.1102 of 1997 under Section 302 of IPC. Ex P7 is the first information report. On 7.8.1997 at about 6.00p.m., he had prepared observation mahazar Ex P2 in the presence of P.W.5 and another witness Perumal. Ex P8 is the rough sketch drawn by him. Thereafter he came to the place where the corpse of the deceased was kept and prepared another mahazar and also had drawn another rough sketch ExP9 in the presence of the same witnesses. He had conducted inquest under Ex P10 in the presence of panchayatars. The corpse was sent for autopsy through P.W.8 head constable who had identified the corpse to the Doctor P.W.6 who had conducted post mortem on the corpse of the victim. P.W.6 conducted the postmortem on 7.8.1997 at about 2.00p.m., on the basis of the requisition made by the investigating officer under Ex P4. The internal examination , he could see blood clot near C4 and C6 bone in the vertebral column. H had seen twisting (torison) to C4 and C6 bone in the vertebral column of the deceased. The doctor has opined that the injury found on the back bone(vertebral coulmn) of the victim is sufficient in the ordinary course of nature to cause death of the deceased. Ex P5 is the post mortem certificate. Ex P6 is the Special Report given by P.W.7,the Village Administrative Officer to P.W.9. P.W.9 has examined the witnesses and recorded their statements. He had arrested the accused on 8.8.1997 and produced before the Judicial Magistrate for remand. He had seized M.O.s 1 to 4 under Form 95 from P.W.8.After completing the formalities,P.W.9 has filed the charge sheet against the accused.

5. When incriminating circumstances were put to the accused under Section 313 Cr.P.C., he has denied his complicity with the crime. After going through the evidence both oral and documentary let in before the learned trial Judge, the learned trial Judge has held that the offence under Section 304(ii) of IPC has been made out against the accused and

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accordingly convicted and sentenced the accused to undergo two years rigorous imprisonment which necessitated the accused to prefer this appeal.

6. The point for determination in this appeal is whether the conviction and sentence by the trial Court under Section 304(ii) of IPC is sustainable for the reasons stated in the memorandum of the appeal?.

7. I heard Mr. V.Raja Mohan, learned Counsel appearing for the appellant and Mr.V.R.Balasubramanian, learned Government Advocate appearing for the respondent and carefully considered their rival submissions.

8. The Point:
P.W.1,P.W.2 and P.W.3 are the eye witnesses to the occurrence. The occurrence had occurred on 5.8.1997 at about 6.30p.m., The victim died on 6.8.1997 at 6.00p.m.,Ex P1 is the complaint preferred on 6.8.1997 at 23.45 hours. The reason for delay, according to P.W.1 wife of the victim is that since she had no sufficient money to take her husband to the Government Hospital at Krishnagiri which is situate 7 k.m away from the place of occurrence, after securing money on the following day, she took her husband in an autorickshaw on 6.8.1997 at 6.00p.m., but her husband breathed his last on the way and immediately she had contacted the Village Administrative Officer) along with him went to the Krishnagiri police Station and preferred Ex P1 complaint.P.W.7 also corroborates the evidence of P.W.1 to the effect that on 6.8.1997 at about 10.00p.m., P.W.1 met him and he took her to the police station and the complaint was preferred by her and that Ex P6 is the special report. So the delay has been properly explained in this case by the prosecution through P.W1. the complainant.

9.The learned counsel appearing for the appellant relying on a decision reported in Dnyaneshwar Dagdoba Hivrekar-vs- The State of Mahaarashtra(1982 Crl.L.J.1870) would contend that there is no intention for the accused to commit murder of the victim and further no weapon was used by the accused therefore an offence under Section 304(ii) of IPC will not be attracted and only an offence under Section 323 of IPC will be attracted since admittedly the accused had assaulted the victim only with his hands. The facts of the above said dictum is that both the deceased as well as the accused were of the same age group of 23 years and while they proceeded together as usual to the gymnasium for their regular exercise on the fateful day, there arose a quarrel between them and immediately the accused had took out a stick and beat the victim on his head which caused internal injuries. The victim was brought to the house of his sister and after some time, the victim was removed to the hospital and inspite of treatment given at the nursing home without responding to the same, he died on the next day morning. The Sessions Court convicted the accused for an offence under Section 304(ii) of IPC and sentenced to under go three years rigorous imprisonment which was challenged before the High Court of Bombay. Taking into consideration, the nature of the injury which was

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caused by a stick by the accused in that case and also according to the medical evidence, the injury sustained by the deceased at the hands of the accused was only simple in nature, the learned Judge of the High Court has converted conviction and sentence to that of one under Section 323 of IPC and sentenced to suffer rigorous imprisonment for a period of 53 days ie., the period already undergone by him. But the said facts of the case will not be applicable to the present facts of the case because even though the accused has assaulted the victim with the hands, according to the Doctor, P.W.6 who conducted the post mortem on the corpse of the deceased, the injury on the vertebral column sustained by the victim is sufficient in the ordinary course to cause the death of the victim which will squarely come within the definition of "grievous hurt" under 8 of Section 320 of IPC which runs as follows: The following kinds of hurt only are designated as "grievous"

> " firstly. . . . . .
> Secondly. . . . .
> thirdly. . . .
> fourthly. . . .
> fifthly. . . .
> sixthly. . . .
> seventhly. . . .
> Eightly: Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits".

10. According to P.W.6, the doctor who had conducted post mortem on the corpse of the deceased had issued Ex P5 post mortem certificate for the injury sustained by the victim on the vertebral column is sufficient to cause death of the victim ie., hurt on the victim is sufficient to cause the death . Under such circumstances, the accused is liable to be convicted only under Section 325 of IPC and not under Section 304 (ii) of IPC. The motive attributed against the accused in this case , according to P.W.1 is that with a promise to get his arrears of the salary from one Perumal, the employer , the accused had taken the deceased along with him on the fateful day. Admittedly, Ganesan, the deceased was previously employed as a watchman for his mango garden and was given yearly salary of Rs.1500/- but subsequently, the victim was replaced by the accused by Perumal and that the victim had requested the accused to use his good offices to get his arrears from Perumal and on the date of occurrence also, the victim has accompanied the accused with a fond hope that he will get his arrears of salary from Perumal and while they were proceeding near the mango garden of Perumal , there arose a quarrel between the accused and the victim and the accused had abused the victim who began to assault him with hands and legs. The blows received by the victim at the hands of the accused on the nap, resulted fatal which had taken away the life of the victim. Under such circumstances, an offence under Section 325 of IPC alone is attracted against the accused and not an offence under

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Section 304(ii) of IPC. The point is answered accordingly.

11. In fine, the appeal is dismissed but the conviction and sentenced by the learned Sessions Judge in S.C.No.168 of 1999 on the file of the Principal Sessions Judge, at Dharmapurai is modified to one under Section 325 of IPC instead of Section 304(ii) of IPC and sentenced to undergo one year rigorous imprisonment. Set off is ordered under Section 428 of IPC. The trial Court is directed to secure the accused by issuing N.B.W and after securing the accused , he shall be sent to prison to spend the unexpended portion of the sentence.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sg

To
1. The Principal Sessions Judge, Krishnagiri.
2. The Judicial Magistrate, Krishnagiri
3.-do- through the Chief Judicial Magistrate, Krishnagiri
4. The Public Prosecutor, High Court, Madras
5. The Inspector of Police,Krishnagiri Town Police Station, Krishnagiri.

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